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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARGARITO T. LOPEZ, SONIA
TORRES, KENI LOPEZ, ROSY
LOPEZ,

Plaintiffs,

v.

CITY OF LOS ANGELES, JOSE
ZAVALA, JULIO QUINTANILLA,
AND DOES 1 THROUGH 10,
INCLUSIVE,
Defendants.

CASE NO. 2:22-cv-07534-FLA-MAAx

*[Assigned to Judge Fernando L. Aenlle-Rocha,
USDC-1st Cthse, Ctrm 6B; Hon. Mag. Maria A.
Audero, USDC-Roybal Bldg, Ctrm 690]*

**DEFENDANTS' MEMORANDUM
OF CONTENTIONS OF FACT AND
LAW**

**TO THIS HONORABLE COURT, ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

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1 **I. MEMORANDUM OF CONTENTIONS OF FACT AND LAW**

2 1. Overview of Defendants' Fact Contentions:

3
4 The incident at issue concerns the death of Margarito Edvin Lopez
5 ("Decedent"). On December 18, 2021, Decedent's sister called 911 reporting that
6 the Decedent was suicidal and in possession of a knife. It was further reported that
7 Decedent walked out of their house holding the knife in his hand and walked west
8 through an alley. An independent witness called 911 and reported seeing a man
9 (Decedent) walking with a large knife. The witness saw Decedent swinging the
10 knife in the air and believed him to be dangerous. Other persons were also in the
11 area, and they too called 911 to report the same.

12
13 Sergeant Burke was the first officer at the scene. He was flagged down by
14 two individuals and immediately identified Decedent, who was sitting on a set of
15 stairs in the front of an apartment building. Sergeant Burke witnessed Decedent
16 holding a knife in his right hand, pressed against Decedent's neck. Sergeant Burke
17 directed Decedent to drop the knife, but Decedent neither responded to nor
18 acknowledged Sgt. Burk. Based on the situation, Sergeant Burke drew his firearm,
19 to be prepared in the event the situation escalated and/or if Decedent charged at him
20 with the knife.

21
22 Defendant Officers Zavala and Quintanilla then arrived on scene. Defendant
23 Zavala radioed for backup and also broadcasted for a Rescue Ambulance to
24 respond. LAPD personnel attempted to de-escalate the situation; however,
25
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1 Decedent did not release the knife, instead putting it to his hand and making what
2 appeared to be slicing motions.

3
4 An officer initially deployed a 40-MM less lethal against Decedent.
5 Decedent was unbothered by the shot and put the knife to his neck. Officers were
6 verbally engaging Decedent in continued attempts to convince him to put down the
7 knife. After some time, Decedent was viewed as making a praying gesture,
8 including the signing of the cross. Based on Decedent's conduct, officers
9 reasonably believed that Decedent was intending to commit suicide by cop.
10 Decedent at some point stood up from the steps, continuing to hold the knife in
11 front of himself. Decedent then took a few steps toward the officers. Reasonably
12 fearing for his safety and that of his fellow officers, Defendant Officer Zavala fired
13 three rounds from his pistol at Decedent. Upon Defendant Officer Zavala's
14 deployment of his third round, Defendant Officer Quintanilla then near
15 instantaneously also fired one round from his pistol, out of fear for the safety of
16 himself and others. Officers approached Decedent as he was on the ground and
17 summoned medical care.

18
19 Decedent was treated for gunshot wounds to the neck, chest, and torso.
20 Decedent ultimately passed away from the gunshot wound to the torso, as
21 determined by the medical examiner.

22 23 24 25 26 27 2. Overview of Defendants' Contentions of Law

28 Defendants' contentions of law (ultimate issue contentions) are as follows:

- 1 A. Any use of force by the Defendant-Officers was objectively reasonable
2 and, therefore, decedent suffered no Fourth Amendment violation.
3
- 4 B. The Defendant-Officers are entitled to qualified immunity because their
5 actions did not violate clearly established law.
6
- 7 C. Because Plaintiffs' claim for excessive force fails, so too does their due
8 process interference familial relations claim, along with their claims for
9 negligence, assault, and battery. *Ochoa v. City of Mesa*, 26 F.4th 1050
10 (9th Cir. 2022); *Edson v. Anaheim*, 63 Cal.App.4th 1269, 1273 (1998);
11 *City of Simi Valley v. Sup. Ct.*, 111 CA 4th 1077, 1084, 4 CR 2d 468, 473
12 (2003).
13
- 14 D. Plaintiffs' negligent infliction of emotional distress claim is not an
15 independent tort under California law.
16
- 17 E. Defendant-Officers did not intentionally commit any violation of
18 decedent's constitutional rights by threat, intimidation, or coercion as set
19 forth in the Bane Act under *California Civil Code* § 52.1, and Plaintiff
20 cannot demonstrate the requisite separation and distinction from the act
21 that allegedly deprived Plaintiff of his rights and such additional conduct
22 necessary so sustain a claim under the Bane Act.
23
- 24 F. Plaintiffs' 1983 claim of interference with familial relations in violation of
25 their substantive due process under the Fourteenth Amendment fails
26 because Plaintiff cannot show consistent involvement in decedent's life
27
28

1 and participation in child-rearing activities. *Wheeler v. City of Santa*
2 *Clara*, 894 F.3d 1046, 1058 (9th Cir. 2018). Plaintiff's claim further fails
3 on the basis that Plaintiff cannot establish that the Defendant-Officers
4 acted with a purpose to harm the decedent for reasons unrelated to
5 legitimate law enforcement objectives or that the defendant-officers acted
6 with "deliberate indifference" to the victim. *Porter v. Osborn*, 546 F.3d
7 1131, 1137 (9th Cir. 2008).
8

9
10 3. Claims and Defenses

11 **A. Plaintiffs' Operative Claims**

12 The following are the operative claims at issue:

- 13 1. A claim for **Fourth Amendment – Excessive Force**, pursuant to 42
14 U.S.C. § 1983 [1st Claim] – by Plaintiff Margarito T. Lopez against
15 Defendant-Officers Julio Quintanilla and Jose Zavala
16
- 17 2. A claim for **Fourteenth Amendment – Substantive Due Process,**
18 **Interference with Familial Relations**, pursuant to 42 U.S.C. Section
19 1983 [3rd claim] – by Plaintiff Margarito T. Lopez against Defendant-
20 Officers Julio Quintanilla and Jose Zavala.
21
- 22 3. A claim for **Negligence** [8th claim] – by Plaintiff Margarito T. Lopez
23 against Defendant-Officers Julio Quintanilla and Jose Zavala, along
24 with vicarious liability as against the City.
25
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1 4. A claim for **Battery** [9th claim] – by Plaintiff Margarito T. Lopez
2 against Defendant-Officers Julio Quintanilla and Jose Zavala, along
3 with vicarious liability as against the City.

4
5 5. A claim for **Negligence Infliction of Emotional Distress** [10th claim]
6 by all Plaintiffs against Defendant-Officers Julio Quintanilla and Jose
7 Zavala, along with vicarious liability as against the City.

8
9 6. A claim for **Bane Act Violation** – Pursuant to Cal. Civ. Code § 52.1
10 [11th Claim] – by Plaintiff Margarito T. Lopez against Defendant-
11 Officers Julio Quintanilla and Jose Zavala, along with vicarious
12 liability as against the City.

13
14 **B. Elements Required to Establish Plaintiff's Operative Claims.**

15 In addition to other pertinent instructions on the operative law, as may be
16 proffered to the Court by one or more of the parties, the following are the essential
17 elements for proving Plaintiff's operative claims by a preponderance of the
18 evidence.
19

20
21 **1. Plaintiff's Claim for Excessive Force (First Claim for Relief).**

22 a. That Defendant-Officers Julio Quintanilla and Jose Zavala used
23 unreasonable/excessive force against Margarito Edwin Lopez; and

24 b. That such unreasonable/excessive force caused the death of Margarito
25 Edvin Lopez.
26

27 ///

28 ///

1 **2. Plaintiff's Claim for Substantive Due Process, Interference with**
2 **Familial Relations (Third Claim for Relief)**

- 3 a. That Plaintiff Margarito T. Lopez is the parent of Margarito Edvin Lopez;
- 4 b. That Defendant-Officers Julio Quintanilla and Jose Zavala used force
- 5 against Margarito Edvin Lopez;
- 6 c. That Defendant-Officers Julio Quintanilla and Jose Zavala acted with a
- 7 purpose to harm Margarito Edvin Lopez; and
- 8 d. That the actions of Defendant-Officers Julio Quintanilla and Jose Zavala
- 9 were unrelated to a legitimate law enforcement objective when the
- 10 Defendant Officers used force against Margarito Edvin Lopez.

11 **3. Plaintiff's Claim for Negligence (Eighth Claim for Relief).**

- 12 a. That Defendant-Officers Julio Quintanilla and Jose Zavala used
- 13 unreasonable/excessive force against Margarito Edvin Lopez; and
- 14 b. That the negligence of Defendant-Officers Julio Quintanilla and Jose
- 15 Zavala regarding the use of force was a substantial factor in causing Margarito
- 16 Edvin Lopez's harm.

17 **4. Plaintiff's Claim for Battery (Ninth Claim for Relief).**

- 18 a. That Defendant-Officers Julio Quintanilla and Jose Zavala
- 19 intentionally caused Margarito Edvin Lopez to be touched;
- 20 b. That Defendant-Officers Julio Quintanilla and Jose Zavala used deadly
- 21 force on Margarito Edvin Lopez;

1 c. That the use of deadly force by Defendant-Officers Julio Quintanilla and
2 Jose Zavala was not necessary to defend human life;

3 d. That Margarito Edvin Lopez was killed; and

4 e. That the use of deadly force by Defendant-Officers Julio Quintanilla and
5 Jose Zavala was a substantial factor in causing Margarito Edvin Lopez's death.
6

7
8 **5. Plaintiff's Claim for Negligent Infliction of Emotional Distress (Tenth**
9 **Claim for Relief).**

10 a. That Defendant-Officers Julio Quintanilla and Jose Zavala negligently
11 caused the death of Margarito Edvin Lopez;

12 b. That when Defendant-Officers Julio Quintanilla and Jose Zavala deployed
13 their weapons that caused the death of Margarito Edvin Lopez, Plaintiffs
14 Margarito T. Lopez, Sonia Torres, Keni Lopez, and Rosy Lopez were
15 present at the scene;
16

17 c. That Plaintiffs Margarito T. Lopez, Sonia Torres, Keni Lopez, and Rosy
18 Lopez were then aware that the deployment of weapons was causing the
19 death of Margarito Edvin Lopez;
20

21 d. That Plaintiffs Margarito T. Lopez, Sonia Torres, Keni Lopez, and Rosy
22 Lopez suffered serious emotional distress; and
23

24 e. That conduct of Defendant-Officers Julio Quintanilla and Jose Zavala was
25 a substantial factor in causing serious emotional distress to Plaintiffs
26 Margarito T. Lopez, Sonia Torres, Keni Lopez, and Rosy Lopez.
27
28

1 **6. Plaintiff's Claim for Violation of the Bane Act – Cal. Civ. Code § 52.1**
2 **(Eleventh Claim for Relief).**

3 a. That Defendant-Officers Julio Quintanilla and Jose Zavala interfered
4 with or attempted to interfere with Margarito Edwin Lopez's constitutional right to
5 be free from unreasonable seizures, including unreasonable force, by threatening or
6 committing violent acts;

7
8 b. That Defendant-Officers Julio Quintanilla and Jose Zavala acted with
9 the specific intent to deprive Margarito Edwin Lopez of his enjoyment of the
10 interests protected by that right;

11
12 c. That Margarito Edwin Lopez was harmed; and

13
14 d. That the conduct of Defendant-Officers Julio Quintanilla and Jose
15 Zavala was a substantial factor in causing Margarito Edwin Lopez's harm.

16 **C. Operative Affirmative Defenses of Defendants and Elements of Proof.**

17 As to the defenses asserted by Defendants which require affirmative proof by
18 Defendants, the elements of such affirmative defenses are summarized herein
19 below. The supporting evidence will be drawn from Defendants' witnesses to
20 support Defendants' contentions of fact (see above). Nothing herein shall be
21 construed as any withdrawal of Defendants' defenses which do not require
22 affirmative proof by Defendants.
23
24

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1 **1. Qualified Immunity**

2 Defendant-Officers Julio Quintanilla and Jose Zavala are entitled to qualified
3 immunity because no constitutional violation occurred, and even if so, any right
4 was not clearly established at the time of the conduct.
5

6 **2. Public Entity/Employee Immunity for Others' Torts (4th**
7
8 **Affirmative Defense)**

9 If any Plaintiffs sustained any injury or damages, such injury or damages
10 were solely caused or contributed to by the wrongful conduct of any of the
11 Plaintiffs and/or third parties, not by Defendants. Therefore, Defendants are not
12 responsible, either in whole or in part, for Plaintiffs' injuries. Additionally,
13 Defendants are immune from liability pursuant to California Government Code
14 Sections 820(b); 820.2; 820.4; 820.8; 821.6; 822.2; 836.6; 845.6; 855.6; 855.8 and
15 Penal Code 196.
16
17

18 **3. Comparative/Contributory Negligence & Assumption of Risk**

19 Margarito Edvin Lopez assumed the known risks by engaging in inherently
20 dangerous activities through his wielding a knife and associated conduct.
21

22 **4. Self-Defense/Defense of Others**

23 Defendant-Officers Julio Quintanilla and Jose Zavala reasonably believed
24 that they and/or others were in imminent danger of suffering bodily injury and
25 reasonably believed that the immediate use of force was necessary to defend
26 themselves and/or others against that danger, and used no more force that was
27 reasonably necessary to defend against the same.
28

1 **5. Punitive damages**

2 Defendant-Officers Julio Quintanilla and Jose Zavala did not act maliciously
3
4 or with evil intent or in callous disregard of Plaintiffs' federally protected rights.

5 **6. Key Evidence to be Relied Upon by Defendant to Support his**
6 **Affirmative Defenses.**

7 Defendants anticipates offering testimonial evidence from the defendant
8 officers and other percipient witnesses. Defendants also anticipate relying up
9 plaintiffs and/or plaintiffs' witnesses, as well as related incident recordings and
10 records, to support their comparative liability defense. Defendants anticipate
11 offering testimonial evidence from their witnesses, plaintiffs, and/or plaintiffs'
12 witnesses to support their mitigation defense

13 **7. Other Operative Defenses.**

14 Defendants incorporate by reference here all such other defenses from the
15 operative Answer not specifically listed above as defenses, but Defendants concede
16 that to the extent such are not *affirmative* defenses for which the burden of proof
17 rests upon Defendant, such defenses need not be listed herein.

18 **8. Reservation of Defenses.**

19 Because the Complaint is couched in vague and conclusory terms,
20 Defendants cannot fully anticipate all affirmative defenses that may be applicable to
21 this action. Accordingly, Defendants hereby reserve the right to assert additional
22 affirmative defenses, if and to the extent that such affirmative defenses are
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1 applicable, and/or to withdraw affirmative defenses as may be appropriate. The
2 assertion of any of the foregoing is not intended and shall not be construed as any
3 stipulation regarding any shifting of the burden of proof to any defendant regarding
4 any of Plaintiff's claims, or elements thereof.
5

6 **II. OPERATIVE PLEADINGS.**

7
8 The operative pleadings which raise the issues are: (1) Plaintiffs' Complaint
9 for Damages, Dkt. #1, (2) Defendant-Officers' responsive pleadings thereto, Dkt.
10 #19, (3) City's responsive pleadings, Dkt. #16, and the Parties' Joint Stipulation
11 regarding Motion for Summary Judgment and/or Adjudication and Plaintiffs'
12 Claims, Dkt. #45
13

14 **III. JURY TRIAL**

15
16 All parties have demanded a jury trial of this action [Dkt., #1, 16, and 19].
17 Accordingly, this matter will be tried by a jury.
18

19 **IV. ANTICIPATED EVIDENTIARY ISSUES**

20 The following law and motion matters and motions *in limine* ("MIL") are
21 pending or contemplated in numerated Paragraph 8: "PENDING OR
22 CONTEMPLATED LAW AND MOTION MATTERS".
23

24 **V. ADMITTED AND STIPULATED FACTS**

25 **A. Admitted Facts.**

26 The following facts are *admitted* by Defendants and require no proof:
27
28

1 1. Defendant-Officers Quintanilla and Jose Zavala were working in the
2 course and scope of their employment with the City of Los Angeles and under the
3 color of law at the time of the incident.
4

5 **B. Stipulated and Uncontroverted Facts**

6 1. On December 18, 2021, law enforcement officers, including
7 Defendant-Officers Quintanilla and Zavala, were employed by Defendant City of
8 Los Angeles through its Police Department.
9

10 2. The pre-force tactics, use of force, and other conduct of Defendant-
11 Officers Quintanilla and Zavala during this incident at issue in this case were
12 actions taken under color of state law.
13

14 3. The pre-force tactics, use of force, and other conduct of Defendant-
15 Officers Quintanilla and Zavala during the incident that is at issue in this case were
16 within the course and scope of his employment with Defendant City of Los Angeles
17 and its Police Department.
18

19
20 **VI. PENDING OR CONTEMPLATED LAW AND MOTION MATTERS**

21 The following law and motion matters and motions *in limine* ("MIL") are
22 stipulated, pending, or contemplated.
23

24 **A. Defendants' Motions.**

25 Defendants have indicated filing the MILs listed below.

26 1. MIL No. 1 – Exclude Source of Payment
27
28

1 a. Scope: An Order prohibiting evidence regarding or referencing in any
2 manner the source of payment of damages,

3
4 b. Basis: Federal Rules of Evidence 401, 402, and 403.

5 2. MIL No. 2 – Exclude Evidence of Other Alleged Incidents, Claims,
6 Lawsuits, Settlement, Verdicts, Judgments, Complaints, Administrative
7 Investigations or Proceedings and/or other Alleged Incidents Concerning any of the
8 Defendants, including National Events and Statistics

9
10 a. Scope: An Order not to mention, refer to, interrogate concerning,
11 nor convey to the jury any evidence concerning any other claims, lawsuits,
12 settlements, verdicts, judgments, complaints, administrative investigations or
13 proceedings and/or other alleged incidents or national events and media
14 involving law enforcement or statistics regarding the number of deaths of
15 civilians in officer involved shootings.

16
17 b. Basis: Federal Rules of Evidence 401, 402, 403, 404, and 407 and
18 confidential and privileged pursuant to Cal. Gov. Code, §§ 832 et seq. and
19 Cal. Evid. Code §§ 1043.

20
21 3. MIL No. 3 – Exclude Evidence on Golden Rule Arguments

22
23 a. Scope: An Order precluding any reference to “Golden Rule” type
24 arguments or similar types of arguments to value damages

25
26 b. Basis: Federal Rules of Evidence 401, 402, 403.

1 4. MIL No. 5 – Exclude or Limit Plaintiff’s Police Practices Expert Scott DeFoe
2 from Testifying

3
4 a. Scope: An Order to exclude or limit expert opinion testimony
5 outside the qualifications/credentials of the proposed expert Scott DeFoe
6 designated by Plaintiffs, including the opinions that lack of foundation, are
7 speculative and testimony that would be based on insufficient facts and data
8 and would be unreliable, and opinion testimony on ultimate issues reserved
9 for the jury, including excluding or limiting the testimony of plaintiff’s
10 expert altogether for lack of proper qualification, or of particular opinions if
11 the Court is inclined to allow testimony;

12
13 b. Basis: i. *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993);
14 ii. FRE 401, 403, 702, 703.
15
16

17 5. MIL No. 6 – Exclude or Limit Plaintiffs’ Medical/Pathologist Expert Dr. Omalu

18
19 a. Scope: An Order to exclude or limit expert opinion testimony
20 outside the qualifications/credentials of the proposed expert Dr. Omalu
21 designated by Plaintiffs, including the opinions that lack of foundation, are
22 speculative and testimony that would be based on insufficient facts and data
23 and would be unreliable, and opinion testimony on ultimate issues reserved
24 for the jury, including excluding or limiting the testimony of plaintiff’s
25 expert altogether for lack of proper qualification, or of particular opinions if
26 the Court is inclined to allow testimony;
27
28

b. Basis:

i. *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993);

ii. FRE 401, 403, 702, 703.

B. Plaintiffs' Motions.

Plaintiffs have indicated that they will be filing various motions in limine.

VII. BIFURCATION OF ISSUES FOR TRIAL

Defendants intend to seek bifurcation of the issues of liability and damages.

VIII. USE OF ELECTRONICS AND EQUIPMENT IN COURTROOM

Pursuant to United States District Court, Central District of California Local Rule 83-6.1.5, defendants are requesting that the Court issue an order for authorization for use of certain equipment inside the Courtroom during the trial of the instant action, to the extent that such equipment is not already permitted by operation of any standing order, **including wireless communication devices such as smartphones, laptops, tablet computers, and associated electronic equipment and/or supporting carts** so as to facilitate efficient presentation and conduct of the trial.

Dated: May 3, 2024 Respectfully submitted,

STONE BUSAILAH, LLP

By: /s/ Muna Busailah

MUNA BUSAILAH, Esq.

Attorney for Defendants **JOSE ZAVALA** and
JULIO QUINTANILLA

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I filed the foregoing **DEFENDANTS' MEMORANDUM OF CONTENTIONS OF FACT AND LAW** with the Clerk of the Court for the United States District Court by using the electronic filing CM/ECF system.

I hereby certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: May 3, 2024

/s/ Muna Busailah

By: MUNA BUSAILAH, Esq.